

**From:** Joe Giovenco [JGiovenco@txaustralia.com.au]  
**Sent:** Tuesday, 23 October 2012 11:41:14 AM  
**To:** Matthew Johnson  
**Subject:** RE: Megalong TV tower

Dear Mr Johnson

Please find attached a response to your correspondence of last Friday.

In regards to the other towers managed by Council at Hartley, Capertee and Glen Davis which fall within the Central West region, unfortunately they are not in TXA's geographically area of engineering service and support and therefore we are not in a position to offer our services for these sites.

I look forward to being notified of the outcome of the Councils meeting on the 5 November 2012.

**Regards**  
**Joe Giovenco | Chief Executive Officer**

 Description: cid:image001.jpg@01CC0A7A.9D829390

**TX Australia Pty Limited**  
ABN 098 086 979 339  
Suite 2 | Level 1 | 7 Eden Park Drive | Macquarie Park NSW 2113 Australia  
PO Box 135 | North Ryde BC NSW 1670 Australia  
P +61 (0) 2 9491 6000 | F +61 (0) 2 9491 6010 | M +61 (0) 412 098 259  
[www.txaustralia.com.au](http://www.txaustralia.com.au)

**PRIVACY AND CONFIDENTIALITY NOTICE**

The information contained in this e-mail (including any enclosed documents) is intended for the named recipients only. It may contain confidential information and if you are not an intended recipient, you must not copy, distribute or take any action in reliance on it. If you have received a message (or enclosure) not intended for you, please notify us by replying to the original sender and delete the message and / or enclosure from your computer.

 Please consider the environment before printing this email

---

**From:** Matthew Johnson [mailto:Matthew.Johnson@lithgow.nsw.gov.au]  
**Sent:** Tuesday, 23 October 2012 9:17 AM  
**To:** Joe Giovenco  
**Subject:** Megalong TV tower

Joe

Did you receive my letter last week seeking further information on the proposal to upgrade the Megalong tower?

I wish to report your response to Council on 5 November which means I need your response by tomorrow in order to meet the reporting timetable.

Also, I neglected to include in my letter to you, part of the Council resolution which was to ask TXA if it would clarify whether it was interested in the upgrade of the other towers managed by Council at Hartley, Capertee and Glen Davis which fall within the Central West region. These have all been switched off in recent months, but Council is still interested in knowing your response. Could you include this in your reply also please

Regards

Matthew Johnson



23 October 2012

Mr Matthew Johnson  
Manager Community and Culture  
Lithgow City Council  
PO Box 19  
**LITHGOW NSW 2790**

Email: [Matthew.Johnson@lithgow.nsw.gov.au](mailto:Matthew.Johnson@lithgow.nsw.gov.au)

Dear Mr Johnson

**Subject: Broadcasters Offer to Upgrade the Megalong Self-Help Site from Analogue to Digital**

I refer to your correspondence of Friday 19 October 2012 whereby you have requested further information to enable Lithgow City Council to make a decision on the Broadcasters' offer at Monday 5 November 2012 Council meeting.

As you are aware, TX Australia Pty Limited (TXA) supplied Blue Mountains City Council (BMCC) with a draft Deed of Licence on the 10 February 2012, following a meeting with their Officers, as they are the ACMA licence holder of the Megalong self-help site. We were of the understanding that the Broadcasters' offer was being discussed with Lithgow City Council (LCC) as the site is jointly managed, with BMCC had discussed with us.

Responses to the questions that you raised:

*The period of the agreement with TXA?*

The term of the Deed is five (5) years, with an option for a further five (5) years.

*Will the electricity costs for digital transmission be commensurate with analogue television?*

The cost of operation of the proposed digital transmission equipment, ancillary equipment and air conditioning unit, we suspect may be double what is being spent today, and suggest that Council budget say \$8,500 p/a.

*Will the air-conditioning unit require upgrade?*

To appropriately cool the building with the installed digital transmission equipment, a 6.3kW air conditioning unit will be required. Suggest Council budget \$5,500 for this unit.

The Council will also be responsible for the ongoing service and support of this unit.

*What is the extent and likely cost of any upgrade of the building, power and antenna to provide digital transmission?*

We believe that the existing, building and power at the site should be suitable. This will need to be confirmed if the offer is accepted. In respect to the antenna, we believe that the input antenna receive signal needs to be upgraded, notwithstanding that we cannot guarantee the performance. We suggest that including the cost of external rigging contractors to carry out the work, \$11,500 be allocated.

*Who will bear responsibility for the replacement or repair of digital transmitters and for the cost of additional digital transmitters if required in the future?*



TX AUSTRALIA



TXA will be responsible for the cost of purchase and installation of the digital transmitters, which will be replacing the analogue transmitters, and ongoing engineering service and support of the transmitters. Any additional digital transmitters which may be required for the term of the Deed will also be the responsibility of TXA.

The other requirements which Council will need to fund such as site leasing costs, security of tenure etc. are further detailed in the attached draft Deed of Licence.

We look forward to Council's resolution following the meeting on the 5 November 2012.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Joe Giovenco', with a long horizontal line extending to the right.

**Joe Giovenco**  
**Chief Executive Officer**

Attached: Deed of Licence

**DEED OF LICENCE**

**[INSERT NAME AND ADDRESS OF SITE]**

BETWEEN

**[INSERT NAME AND ABN OF SELF-HELP PROVIDER]**

Licensor

and

**TX AUSTRALIA PTY LIMITED**

**ABN 98 086 979 339**

Licensee



**“Permitted Purpose”** means the retransmission of free-to-air digital television broadcasts at the Site;

**“Personnel”** of a party includes the officers, employees, agents, contractors, sub-contractors and invitees of that party;

**“Receiving Party”** has the meaning given in clause 18.1;

**“Schedule”** means the Schedule so described which is included in this document;

**“Site”** means the site located at the address stated in item 3 of the Schedule and includes the transmission tower, equipment shelter, Antenna System and all other fixtures and structures located at that site;

**“Site Drawings”** means the unscaled plan drawings annexed to this Deed and marked "A";

**“State”** means the State of the Commonwealth of Australia in which the Site is situated;

**“Term”** means the term of the Licence stated in item 5 of the Schedule, and if the Licence is renewed under clause 12 includes the period specified in item 6 of the Schedule, and (except in clauses 13 and 14(a)) includes any period of holding over under clause 14.

## **2 GRANT OF LICENCE**

In consideration of the covenants herein contained and the Licence Fee payable by the Licensee set out in the Schedule hereto the Licensor hereby grants to the Licensee for the Term:

- (a) the non-exclusive right and privilege and licence to the Licensee and its Personnel to enter upon the Site (including as permitted under clauses 7 and 8) as required by the Licensee in connection with the Permitted Purpose, including the installation and operation of the Licensee's Equipment in accordance with the Site Drawings and the maintenance thereof during the Term; and
- (b) the exclusive right and privilege and licence to the Licensee and its Personnel to use and maintain the Antenna System in connection with the Permitted Purpose during the Term.

## **3 LICENCE FEE**

If demanded by the Licensor, and after receiving a valid tax invoice, the Licensee shall pay a yearly Licence Fee as set out in Item 9 of the Schedule. Apart from the Licence Fee, no other amounts are payable by the Licensee to the Licensor in connection with the rights granted under this Deed.

## **4 INSTALLATION**

The Licensor shall permit the Licensee and its Personnel to erect the Equipment at the Licensee's own expense in a proper and workmanlike manner at the Site.

## **5 LICENSOR OBLIGATIONS**

- (a) The Licensor, at its own cost, must provide and maintain sufficient power supply and power connection to meet the needs of the Licensee's Equipment on the Site for the safe continuous use of the Licensee's Equipment during the Term. For clarification, the Licensor is responsible for all power usage costs in respect of the Site during the Term, including the costs of any power usage at the Site by the Licensee, its Personnel and the Equipment.
- (b) The Licensor, at its own cost, must provide and maintain sufficient air-conditioning to the Licensee's satisfaction for the Licensee's ground-based transmission Equipment to enable the safe and continuous use of such Equipment during the Term.
- (c) If the Licensee notifies the Licensor that the existing Antenna System at the Site requires upgrading or replacement, the Licensor, at its own cost, must upgrade or replace the existing Antenna System in accordance with the Licensee's reasonable directions.

- (d) The Licensor, at its own cost, must keep and maintain the Site (other than the Antenna System (subject to the Licensor's obligations under paragraph (c) above)) in good repair, order and condition during the Term.
- (e) Without in any way limiting the Licence granted under this Deed, if the Licensor is not the owner of the Site the Licensor, at its own cost, must promptly notify the Licensee of:
  - (i) the details of any notices the Licensor receives from the Landlord which will affect, or may affect, the Licensee's rights to access and use the Site as contemplated under this Deed, including any notices relating to expiration, termination or renewal of the Head Lease; and
  - (ii) any changes, or proposed changes, to the Landlord.
- (f) The Licensor, at its own cost, must ensure that vegetation is cleared from the Site and adjacent to the Site to the extent necessary to ensure line of site is maintained to the primary broadcast tower from which digital terrestrial television signals are received at the Site during the Term.
- (g) As between the parties, the Licensor acknowledges that the Equipment is the property of the Licensee, and that nothing in this Deed operates to transfer title in such Equipment to the Licensor. The Licensor agrees not to use or otherwise interfere with such Equipment.

## **6 LICENSEE OBLIGATIONS**

- (a) The Licensee will ensure that the Site is kept clean as a consequence of any operation and maintenance relating to the Licensee's Equipment including any removal of the Licensee's obsolescent equipment.
- (b) The Licensee will repair any damage caused to the Licensor's fixtures and structures on the Site caused by the Licensee's maintenance activities.
- (c) The Licensee will be responsible for the ongoing maintenance of the Antenna System during the Term, excluding any need to upgrade or replace the Antenna System (which the Licensor remains responsible for) and fair wear and tear. The Licensor grants the Licensee the right to so maintain the Antenna System.
- (d) The Licensee will remove the existing analogue terrestrial television transmission equipment from the Site and provide it to the Licensor.

## **7 INSPECTIONS**

The Licensee and its Personnel may carry out such inspections, alterations, additions, substitutions and other works as may be necessary for the proper efficient and safe use of the Equipment.

## **8 ACCESS TO THE SITE**

- (a) The Licensee and its Personnel may enter the Site with or without materials, plant and other apparatus and vehicles for the purpose of using the Site and exercising the Licensee's rights under this Deed, at all times of the day and night on a 24/7 basis during the Term, provided that upon entry and exit of the Site the Licensee shall ensure that all gates are left as found, generally closed and secured.
- (b) If the Licensor is not the owner of the Site, the Licensor will notify the Licensee of any reasonable site access requirements of the Landlord which are applicable to the Licensee's rights to access and use the Site as contemplated under this Deed (provided that they do not derogate from the rights granted to the Licensee under this Deed), and the Licensee agrees to comply with those requirements.

## **9 WARRANTIES**

The Licensor warrants to the Licensee that it is the lessee or legal occupier of the Site and has full legal capacity to enter into this Deed without need for any further consents so as to give it full force and legal effect according to its terms. If the Licensor is not the owner of the Site, the Licensor warrants to the Licensee that it has obtained all necessary approvals of the Landlord in granting the Licence to the Licensee under this Deed.

## **10 INSURANCES**

- (a) The Licensee and Licensor will each separately maintain public liability insurance to a sum insured of not less than \$20 million.
- (b) The Licensor will maintain:
  - (i) insurance in respect of property damage to a sum insured of not less than \$20 million; and
  - (ii) workers compensation insurance in accordance with applicable legislation.

## **11 RIGHT TO SUBLICENCE**

The Licensee will be at liberty to share the Equipment with, or use the Equipment for, the Permitted Purpose on such terms and conditions that are negotiated by the Licensee with those third parties.

## **12 OPTION TO RENEW**

Unless the Licensee notifies the Licensor at least 3 months prior to the Expiry Date that it does not wish to renew this Deed, this Deed will automatically renew with effect from the Expiry Date for a further term as set out in Item 6 of the Schedule subject to the same terms and conditions as are contained in this Deed with the exception of this option clause.

## **13 HEAD LEASE**

If the Licensor is not the owner of the Site, and the expiry date of the Head Lease stated in Item 12 of the Schedule or as otherwise in effect from time to time is earlier than the expiry of the Term:

- (a) the Licensor must renew such head lease prior to that expiry date so that it remains in effect during the Term, and
- (b) if the Licensor does not renew such head lease prior to that expiry date, without limiting the Licensee's other rights or remedies the Licensor will be responsible for any costs incurred by the Licensee entering into appropriate arrangements directly with the Landlord to permit the Licensee to continue to access and use the Site as contemplated under this Deed for the remainder of the Term, including any lease or licence fees payable to the Landlord.

## **14 HOLDING OVER**

- (a) If the Licensor permits the Licensee to continue to occupy the Site beyond the Term otherwise than pursuant to the grant of a further licence, the Licensee shall do so on an annual basis on the same licence fee payable immediately prior to the termination date.
- (b) The Licence so created is able to be terminated at any time by either party on at least 12 month's notice in writing given to the other party but otherwise the Licence shall continue on the same terms and conditions as are contained in this Deed.

## **15 ASSIGNMENT**

The Licensee may assign its rights and interests under this Deed to a third party, with the Licensor's prior written consent, which must not be unreasonably withheld.

## **16 TERMINATION**

- 16.1 The Licensee may, without further liability, immediately terminate this Deed if:
- (a) the Site is damaged or destroyed or if there is interruption to access to the Site so as to render the Site or any part of the Site wholly or substantially unfit for occupation or use by the Licensee or inaccessible by any means of access;
  - (b) the Site is rendered unfit for the Licensee's use by reason of the emergence of significant physical or radio interference;
  - (c) any application for a required consent or permit for the use of the Licensee's Equipment at the Site is rejected or a consent or permit is cancelled, lapses or is otherwise terminated and no further or replacement consent or permit can reasonably be obtained on terms to the Licensee's reasonable satisfaction; or
  - (d) the Licensee no longer requires the Site.
- 16.2 Either party may, without further liability, immediately terminate this Deed if the other party:
- (a) commits a material breach of this Deed and fails to remedy that material breach within 20 Business Days of receipt of notice from the non-defaulting party; or
  - (b) becomes insolvent or is otherwise unable to pay its debts when they fall due.
- 16.3 Termination or expiry of this Deed does not affect any accrued rights or remedies of either party. Following termination or expiry of this Deed, the Licensee and its Personnel may access the Site for the purpose of removing the Equipment from the Site.
- 16.4 Clause 16.3 will survive the expiration or termination of this Deed.

## **17 INDEMNITY & LIABILITY**

- 17.1 The defaulting party shall indemnify the other party from and against all loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by the other party arising from:
- (a) any negligent, wilful or unlawful act or omission by the defaulting party or the defaulting party's Personnel in connection with this Deed or the use of the Site; and
  - (b) any breach by the defaulting party of its obligations under this Deed.
- 17.2 The defaulting party hereby releases to the full extent permitted by law the other party and any of the other party's Personnel from any accident occurring at the Site including consequential loss, but nothing in this clause 17.2 excludes liability of a party or its Personnel for death, personal injury or damage to property.
- 17.3 The defaulting party's indemnity does not apply to any act, matter, thing or consequence to the extent it is caused or contributed by the negligence or default of the other party or its Personnel.
- 17.4 This clause 17 will survive the expiration or termination of this Deed.

## **18 CONFIDENTIALITY**

- 18.1 This Deed, and any other information supplied by a party (**Disclosing Party**) to the other party (**Receiving Party**) in connection with this Deed which is confidential in nature (together, **Confidential Information**), must be kept confidential by the Receiving Party.
- 18.2 The Receiving Party may only use the Confidential Information of the Disclosing Party for the purposes of performing its obligations under this Deed, and subject to paragraph (c) must keep the Disclosing Party's Confidential Information confidential.

18.3 The Receiving Party may disclose the Confidential Information to those of its Personnel that need to know the Confidential Information, provided that the Receiving Party must ensure that any such Personnel keep that Confidential Information confidential on the same terms as those set out in this clause 18. The Receiving Party may also disclose the Confidential Information of the Disclosing Party to the extent required by law, or with the prior written consent of the Disclosing Party.

18.4 This clause 18 will survive the expiration or termination of this Deed.

## **19 NOTICES**

### **19.1 Method of Service**

Any notice to be given under this Deed by one of the parties to the other must be in writing and is given for all purposes by delivery in person, by pre-paid post or by facsimile transmission addressed to the receiving party at the address or number set out in Item 1 of the Schedule in the case of the Licensor and in Item 2 of the Schedule in the case of the Licensee.

### **19.2 Change of Address**

A party may at any time change its address, postal address or facsimile number by giving written notice to the other party.

## **20 LAW AND JURISDICTION**

### **20.1 Governing Law**

This Deed is governed by the law in force in the State.

### **20.2 Submission to Jurisdiction**

The parties submit to the non-exclusive jurisdiction of the courts of the State and the Commonwealth and any courts that may hear appeals from those courts, in respect of any proceedings in connection with this Deed.

## **21 GENERAL**

### **21.1 Amendment**

This Deed may only be amended or supplemented in writing, signed by the parties.

### **21.2 Costs and Charges**

Each party will pay its own costs in relation to the preparation and execution of this Deed. The Licensee will pay any stamp duty assessed on this Deed.

### **21.3 GST**

Unless stated otherwise and subject to this clause, any amount required to be paid by the Licensee is calculated exclusive of GST as set out in the schedule to this Deed.

If the Licensor becomes liable to remit GST in connection with this Deed then the Licensee shall pay an additional amount to the Licensor equal to the amount of GST payable by the Licensor. The Licensor will provide the Licensee with a valid tax invoice as a result of supplies made under this Deed on which GST is levied.

EXECUTED AS A DEED

**[Insert alternative execution clause as appropriate for the relevant self-help provider]**

Signed and delivered by **[insert]** in accordance with section 127 of the *Corporations Act 2001* (Cth) and by:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Company Secretary

**SIGNED AND DELIVERED** by and on behalf of **TX AUSTRALIA PTY LIMITED** in accordance with section 127 of the *Corporations Act 2001* (Cth) and by:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Company Secretary

## SCHEDULE

### 1 THE LICENSOR

Name: [insert]  
Address: [insert]  
Telephone: [insert]  
Facsimile: [insert]  
Contact: [insert]  
Email: [insert]

### 2 THE LICENSEE

Name: **TX AUSTRALIA PTY LIMITED**  
ABN 98 086 979 339  
Address: Suite 2, Level 1, 7 Eden Park Drive, Macquarie Park New South Wales 2113  
Facsimile: (02) 9491 6010  
Contacts: Mr Joe Giovenco – Chief Executive Officer

### 3 THE SITE

Address: [insert]

### 4 EQUIPMENT

The Licensee will replace the existing analogue terrestrial television transmitters with digital transmitters. All new and/or existing equipment labelled "TXA" as per the Site Drawings marked "A" attached (or any replacement thereof during the Term), shall form part of the Licensee Equipment and are deemed to be the exclusive property of the Licensee under this Deed of Licence.

- 5 **TERM:** The period commencing on the Commencement Date and expiring on the Expiry Date
- 6 **OPTION:** 5 years
- 7 **COMMENCEMENT DATE:** The date of execution of this Deed by the parties
- 8 **EXPIRY DATE:** The date which is 5 years from the date on which the transmission of digital terrestrial television commences at the Site
- 9 **LICENCE FEE:** \$1.00 pa (excl GST) if demanded by the Licensor
- 10 **LICENCE FEE INCREASE:** Nil
- 11 **LANDLORD:** [insert]
- 12 **HEAD LEASE EXPIRY DATE:** [insert]

## ANNEXURE – SITE DRAWINGS

[Site Drawings to be annexed and marked "A"]